

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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In re

JOHN A. DEEP,

Chapter 13  
Case No. 03-14925

Debtor(s).  
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JOHN A. DEEP,

Plaintiff(s),

-against-

Adv. Pro. No. 04-90037

THE RECORDING INDUSTRY  
ASSOCIATION, et.al.,

Defendant(s).  
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APPEARANCES:

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Diane Davis, Esq.

Hon. Robert E. Littlefield, Jr., U.S. Bankruptcy Judge

**DECISION AND ORDER**

Before the court is a motion for reconsideration filed on June 1, 2004, by John A. Deep ("Debtor"), for reconsideration of the court's order dated and entered May 21, 2004 dismissing the instant case and a related adversary proceeding, *John A. Deep v. The Recording Industry Ass'n of America, et. al.* (Adv. Pro. No.04-90037). For the record, any pleadings filed in the

main case in connection with Debtor's motion shall be deemed filed in the adversary proceeding as well.

After consideration of the motion papers, responsive pleadings, oral argument, and the additional pleading filed by the Debtor, the court refuses to grant the motion as it relates to dismissal of the main case. The court still concludes that the reasons articulated on the record on May 18, 2004, namely that the court's March 25, 2004 order was not complied with and the court found unreasonable delay in this case to the prejudice of creditors as well as the Chapter 13 Trustee, justify the court's ruling.

As to the adversary proceeding, the court will reconsider its dismissal order in a limited manner. At the hearing on September 24, 2004 the court indicated that in dismissing the Debtor's Chapter 13 case, and consequently the related adversary proceeding, it did not intend to prejudice any of the Debtor's substantive rights. The court believes it was clear that the dismissal was without prejudice to the Debtor's refiling, although the court did note that any subsequent refiling would be under a heightened scrutiny. As a general rule, related proceedings ordinarily should be dismissed following the dismissal of the underlying bankruptcy case. *In re Porges*, 44 F.3d 159, 162 (2d Cir. 1995). The general rule favors dismissal because the bankruptcy court's jurisdiction over a related adversary proceeding depends on the proceeding's nexus to the underlying bankruptcy case. *Id.* The decision whether to retain jurisdiction is within the discretion of the bankruptcy court. *Id.*

With the Debtor's current motion, the court is hearing for the first time that his adversary proceeding, or portions of it, may be barred by the statute of limitations should the Debtor be forced to recommence the action in District Court or in the context of a new Chapter 13 filing.

The court indicated previously that if the Chapter 13 case had not been dismissed, at some point, the court probably would have abstained from hearing the adversary proceeding as the substance, antitrust and copyright infringement, would best be addressed by the District Court. As a practical matter, the adversary proceeding probably should have been commenced in the District Court in the first instance.

For all of the foregoing reasons, it is hereby

ORDERED, that the Debtor's motion for reconsideration of the court's May 21, 2004 order of dismissal as it relates to the main case (Case No. 03-14925) is denied; and it is further

ORDERED, that the court will vacate its May 21, 2004 order of dismissal as it relates to the adversary proceeding (Adv. Pro. No. 04-90037) for the limited purpose of allowing the Debtor's request to the District Court for withdrawal of the reference to proceed.

Dated: September 28, 2004

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Hon. Robert E. Littlefield, Jr.  
U.S. Bankruptcy Judge